CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Customs COD Application No. 85920 of 2022
Customs Miscellaneous Application No. 85921 of 2022
(On behalf of Appellant)

In
Customs Appeal No. 86073 of 2014

(Arising out of Order-in-Original No. 145/2013/CAC/CC(I)/AB/Gr.V dated 09.01.2014 passed by the Commissioner of Customs (Import), Mumbai.)

Madan Lalwani ....Appellant
202, Kedarnath Towers,
Sanjeev Enclave Building Lane,
Seven Bunglows, Andherei (West),
Mumbai – 400 061

VERSUS

Commissioner of Customs (Import), Mumbai ....Respondent
New Customs House,
Ballard Estate,
Mumbai- 400 001

WITH

Miscellaneous Application Nos. (i) Customs/COD/85922/2022 and Customs/Misc./85923/2022 in Customs Appeal No. 86074/2014 (Madan Lalwani) (ii) Customs/COD/85924/2022 and Customs/Misc./85925/2022 in Customs Appeal No. 86110/2014 (Madan Lalwani) (iii) Customs/COD/85926/2022 and Customs/Misc./85927/2022 in Customs Appeal No. 86188/2014 (Madan Lalwani) (iv) Customs/COD/85928/2022 and Customs/Misc./85929/2022 in Customs Appeal No. 86416/2014 (Madan Lalwani) (v) Customs/COD/85943/2022 and Customs/Misc./85959/2022 in Customs Appeal No. 87776/2014 (Madan Lalwani) (vi) Customs/COD/85944/2022 and Customs/Misc./85960/2022 in Customs Appeal No. 88582/2014 (Madan Lalwani) (vii) Customs/COD/85945/2022 and Customs/Misc./85961/2022 in Customs Appeal No. 89363/2014 (Madan Lalwani) (viii) Customs/COD/85946/2022 and Customs/Misc./85962/2022 in Customs Appeal No. 89768/2014 (Madan Lalwani) (ix) Customs/COD/85947/2022 and Customs/Misc./85963/2022 in Customs Appeal No. 90052/2014 (Madan Lalwani) (x) Customs/COD/85941/2022 and Customs/Misc./85966/2022 in Customs Appeal No. 87445/2015 (Madan Lalwani) (xi) Customs/COD/85938/2022 and Customs/Misc./85955/2022 in Customs Appeal No. 86918/2016 (Madan Lalwani) (xii) Customs/COD/85939/2022 and Customs/Misc./85956/2022 in Customs Appeal No. 87037/2017 (Madan Lalwani) (xiii)

Customs/COD/85940/2022 and Customs/Misc./85957/2022 in Customs Appeal No. 87180/2017 (Madan Lalwani) (xiv) Customs/COD/85967/2022 and Customs/Misc./85964/2022 in Customs Appeal No. 87187/2017 (Madan Lalwani) (xv) Customs/COD/85942/2022 and Customs/Misc./85958/2022 in Customs Appeal No. 87609/2017 (Madan Lalwani) (xvi) Customs/COD/85932/2022 and Customs/Misc./85949/2022 in Customs Appeal No. 85324/2020 (Madan Lalwani) (xvii) Customs/COD/85933/2022 and Customs/Misc./85950/2022 in Customs Appeal No. 85328/2020 (Madan Lalwani) (xviii) Customs/COD/85936/2022 and Customs/Misc./85953/2022 in Customs Appeal No. 86229/2020 (Madan Lalwani) (xix) Customs/COD/85937/2022 and Customs/Misc./85954/2022 in Customs Appeal No. 86230/2020 (Madan Lalwani) (xx) Customs/COD/85968/2022 and Customs/Misc./85965/2022 in Customs Appeal No. 85594/2021 (Madan Lalwani) (xxi) Customs/COD/85934/2022 in Customs Appeal No. 85794/2021 (Madan Lalwani) (xxii) Customs/COD/85935/2022 and Customs/Misc./85952/2022 in Customs Appeal No. 85795/2021 (Madan Lalwani) (xxiii) Customs/COD/85931/2022 and Customs/Misc./85951/2022 in Customs Appeal No. 85149/2015

(Arising out of Order-in-Original No. 104/2014/CAC/CC(I)/AB/Gr.V dated 10.10.2014 passed by the Commissioner of Customs (Import), Mumbai.)

APPERANCE:

Mr. A. Mishra & Associates for the Appellant
Mr. S.K. Hatangadi, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NOS. A/85083-85106/2023

Date of Hearing: 24.01.2023
Date of Decision: 24.01.2023

PER: DR. SUVENDU KUMAR PATI

Condonation of delay applications listed in the cause-list dated 24.01.2023 from Sr. No. 1 to Sr. No. 16 & Sr. No. 32 to Sr. No. 38 as well as Sr. No. 40 alongwith miscellaneous applications for abatement of proceeding as per Rule 22 read with Rule 41 of the CESTAT (Procedure) Rules, 1982 are heard together and taken up for passing of a common order.

2. Facts of the case, in brief, is that main Appellant Late Madan Lalwani has been penalised under Section 112(a) & 114AA of the Customs Act, 1962 for violation of various provisions of Customs Act, by the Commissioner of Customs (Import), Mumbai. All those individual cases against which he had preferred the above referred appeals before this Tribunal were all accepted for hearing. In the meantime Appellant had expired on 28.01.2022, as reveals from the attested true copy of death certificate issued by the Municipal Corporation of Greater Mumbai on 09.02.2022. Mrs. Meena Madan Lalwani i.e. widow of deceased Appellant Late Madan Lalwani, whose name is also noted in the same death certificate as his wife, filed COD applications in all those appeals alongwith miscellaneous applications to *abate* the proceedings in view of death of her husband. The same is heard today and taken up for orders.

3. Learned Counsel for the deceased Appellant submits that in view of death of deceased Madan Lalwani his power ceased as he has not been officially engaged by the present applicant namely the wife of deceased Appellant. She has also not sought for substitution as Appellant and instead filed application for abatement of the appeals.

4. Learned Authorised Representative is present and he acknowledged the fact of death and admitted that no substitution petition is field for continuance of these appeals.

5. Rule 22 of the CESTAT (Procedure) Rules, 1982 reads as here under:-

> ***"RULE 22. of proceedings after death or adjudication as an insolvent of a party to the appeal or application-***
>
> ***Where in any proceedings the appellant or applicant or a respondent dies*** *or is adjudicated as an insolvent or in the case of a company, is being wound up,* ***the appeal or application shall abate,*** *unless an application is made for continuance of such proceedings by or against the successor-in-interest, the executor, administrator, receiver, liquidator or other legal representative of the appellant or applicant or respondent, as the case may be:*
>
> *Provided that every such application shall be made* ***within a period of sixty days*** *of the occurrence of the event:*
>
> *Provided further that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period so specified, allow it to be presented within such further period as it may deem fit".*
>
> *(Highlighted to emphasise)*

Going by the text of the Rule it is very much clear that only for the purpose of getting substituted for the Appellant or Respondent, who is dead, for the purpose of continuance of appeal substitution is required to be done within a period of 60 days and not for abating the appeal which is automatic upon completion of 60 days of the occurrence of the event namely death of the party. This being the position of law and having regard to the abatement petitions through which death of the Appellant is brought to the knowledge of this Tribunal, we *abate* all these appeals and reject Condonation of delay applications for being infructuous since not filed for proper substitution of deceased Appellant. Needless to mention here that only penal actions are substantiated and penalties are imposed on the deceased Appellant for his personal conduct for which no recovery can be made from the successor in interest. Hence the order.

ORDER

6. Miscellaneous applications filed by Mrs. Meena Madan Lalwani, widow of Appellant M.A. Lalwani are allowed. All appeals of deceased Appellant Late Madan Lalwani abate under Rule 22 of the CESTAT (Procedure) Rules, 1982. COD applications are infructuous and rejected.

(Operative portion of the order pronounced in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

Prasad